

## **REMARKS**

Claims 1 and 3-20 continue to appear in this application.

The indication of allowable subject matter in claims 9, 10, 15, 16, 18 and 19 is again noted with appreciation. As claim 18 is an independent claim, it is believed that claims 18-19 should have been indication as allowable. In view of the following comments, it is believed that the entire application is in condition for allowance.

Claims 1, 3-8, 11-14, 17 and 20 were rejected over Maleville et al. U.S. Patent Publication No. 2004/0112866 ("Maleville"), either alone or in combination with Yamada et al. US Patent Publication No. 2005/0042800 for the reasons set forth in the office action.

Initially, applicants note that the 102(e) date for Maleville is the filing date of its earliest US provisional patent application, which is April 30, 2003. As the present application has a French Priority date of October 30, 2002, it has antedated the 102(e) date of Maleville. In support of this position, an English translation of applicants' French priority application is enclosed.

Furthermore, these rejections should be withdrawn since the Maleville patent application is not prior art to the present claims. 35 U.S.C. § 103(c) provides that subject matter that only qualifies as prior art under 35 U.S.C. § 102(e) and that is commonly owned at the time the invention was made cannot be applied in a rejection under 35 U.S.C. § 103(a). This provision applies to all applications filed on or after November 29, 1999, and it is applicable to the current application that was filed October 30, 2003. The Maleville patent application is owned by the same assignee as the present application, namely Soitec SA, as evidenced by an assignment that was recorded on December 3, 2003 at Reel 014790 Frame 0563. An assignment for Soitec SA for the present application was recorded on October 30, 2003 at Reel 014670 frame 0777. Applicants confirm that the subject matter of each application was commonly owned at all times. In view of these assignments, and as Maleville was not published until after the priority date of this application, the Maleville patent application cannot be validly cited as prior art against the present claims. Accordingly, all rejections based on Maleville should be withdrawn.

In view of the above, it is believed that claims 1 and 3-20 are in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree, then a

telephonic or personal interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the claims.

Date: 10/11/05

Respectfully submitted,

  
Allan A. Fanucci (Reg. No. 30,256)

**WINSTON & STRAWN LLP**  
**CUSTOMER NO. 28765**  
(212) 294-3311